

# MINUTES

August

August 1<sup>st</sup> – August 31<sup>st</sup>

MINUTES  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

Monday, August 1, 2008

Division Two

**A118685 – The People, v. Tracy Edward Johnson.**

The judgment of conviction is affirmed. The sentence is reversed, and the cause is remanded for correction of the sentence and preparation of a new abstract of judgment consistent with part IIA of this opinion *ante*. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A117727 – The People, v. Terrence Lorrان Smith.**

The judgment of conviction is modified to stay execution of the sentence imposed for count 7, assault with intent to commit a sexual offense. The trial court is directed to modify the abstract of judgment accordingly and forward it to the Department of Corrections. As modified, the judgment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

Division Five

**A118726 – The People, v. Clarence Michael Garrison.**

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Reardon, J.<sup>1</sup> (Not for Publication.)

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<sup>1</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, August 4, 2008

Division Four

**A119514 – Paul H. Melbostad, v. Donald G. Fisher.**

By The Court: On the court's motion, this court's July 23, 2008 opinion is hereby certified for publication. The Reporter of Decisions is directed to publish said opinion. Ruvolo, P.J. (Certified for Publication.)

Tuesday, August 05, 2008

Division Two

**A118484 – The People, v. Kelvin Deshawn Ross.**

The judgment of conviction is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

**A119153 – In re Yasmin F., a Person Coming Under the Juvenile Court Law. The People, v. Yasmin F.**

The disposition order is affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

**A119022 – In re Athena H., et al., Persons Coming Under the Juvenile Court Law. Lake County Department of Social Services, v. Cynthia H., et al.**

The August 13, 2007, order is affirmed. Siggins, J., We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A118221 – In re S.F., a Person Coming Under the Juvenile Court Law. The People, v. S.F.**

The juvenile court's orders are affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Division Five

Tuesday, August 05, 2008(Continued)

**A114977 – The People, v. Ernest Alfonso Reed.**

The judgment is affirmed. Reardon, J.<sup>2</sup>, Simons, Acting P.J., Needham, J. (Not for Publication.)

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<sup>2</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, August 5, 2008

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J. and Sepulveda, J.; Annie Reasoner, Deputy Clerk; CHP Officer Christian Oliver, Bailiff.

- A115603      People  
                 v.  
                 Nathan Lee Davison  
Cause called. Kyle Gee argued for appellant Davison. Mark Howell argued for respondent People of the State of California. W. Eric Blumhardt argued for appellant Builders. Eric Firstman argued for respondent. Cause submitted.
- A115149      People  
                 v.  
                 Edward Lee Smith  
Cause called. Carol Strickman argued for appellant Smith. Bruce Ortega argued for respondent People of the State of California. Cause submitted.
- At this point, Sepulveda, J. left the bench and Rivera, J. joined the bench.
- A121204      Mt. Diablo Unified School District, Petitioner,  
                 v.  
                 Workers Compensation Appeals Board and Nicole Rollick, Respondents.  
Cause called. Warren Pulley argued for petitioner Mt. Diablo Unified School District. C. Patrick Hamblin argued for amicus curiae Alliance of Schools For Cooperative Insurance Programs. Mark E. Gearhart argued for respondent Nicole Rollick. Cause submitted.
- A117066      Jennifer Moss  
                 v.  
                 State of California, et al  
Cause called. Amanda Uhrhammer argued for appellant Moss. Andrew Shalauta argued for respondent Bagri. Cause submitted.

*-- continued on next page --*

- A118433      Geronima Belen  
                 v.  
                 Matthew Taylor  
Cause called. Jack Leavitt argued for appellant Taylor. Bruce Prescott argued for respondent Belen. Cause submitted.

Court recessed at 11:01 a.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, August 5, 2008

The Court convened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Reardon, Acting P.J., Sepulveda, J.; and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Christian Oliver, Bailiff.

A117682      Allen H. Waterman et al.  
v.  
Evergreen at Petaluma  
Cause called. Andrew K. Whitman argued for appellant Evergreen. Margaret Flynn argued for respondents. Cause submitted.

Court adjourned at 1:53 p.m.

Wednesday, August 06, 2008

Division Four

**A118489 – The People, v. Daryl Lynn Jenkins.**

The judgment of conviction is reversed. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, August 6, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J., and Siggins, J.; and B. Robbins, Deputy Clerk.

A117596     Thomas J. Murray,  
                 v.  
                 United Services Automobile Association.

A117598     Vincent B. McLorg,  
                 v.  
                 United Services Automobile Association.  
Cause called and argued by Paul W. Cane, counsel for appellant, and Cliff Palefsky, counsel for respondent Murray, and Daniel M. Crawford, counsel for respondent McLorg. Cause ordered submitted.

At this point in the proceedings, McGuiness, P.J. left the bench and Jenkins, J. joined the bench. Pollak, J. presided over the remainder of the session.

A117123     The People,  
                 v.  
                 Mack Arthur West, Jr.  
Cause called and argued by Rodney R. Jones, counsel for appellant, via teleconference, and Brent Wilner, counsel for respondent. Cause ordered submitted

A117475     Gas Pipeline Explosion Cases.  
                 Marilu Angeles, et al.,  
                 v.  
                 Mariel Hernandez.  
Cause called and argued by Joseph W. Carcione Jr., counsel for appellant, and Robert L. Rusky, counsel for respondent. Cause argued and submitted.

COURT ADJOURNED



Thursday, August 7, 2008

Division Four

**A115729 – The People, v. Isnin Ben Idris.**

The judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A120362 – Estate of Mario Joseph Ciampi, James Page, as Executor, etc., v. Carolyn S. Ciampi, The Regents of The University of California et al.**

The order admitting Mario Ciampi's will to probate is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Thursday, August 7, 2008

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Swager, Justice, Fred Abad, Deputy Clerk; and CHP Officer Christian Oliver, Bailiff.

Justice Marchiano announced the absence of Justice Margulies for oral argument and asked all counsel for waiver of her presence or continue to this court's September calendar. All counsel waived the presence of Justice Margulies.

- A116446    People,  
              v.  
              Steven Jesus Lomeli.  
Cause called and argued by Richard Such, counsel for appellant, and Donna Provenzano, counsel for respondent. Cause ordered submitted.
- A118181    People,  
              v.  
              Mario Ernesto Bolanos.  
Cause called and argued by Donald Bergerson, counsel for appellant, and Martin Kaye, counsel for respondent. Cause ordered submitted.
- A118434    Song X Sun,  
              v.  
              City of Oakland, et al..  
Cause called and argued by Andrew Schwartz, counsel for appellant, and Christopher Kee, counsel for respondents. Cause ordered submitted.
- A118537    Berkeley Police Association,  
              v.  
              City of Berkeley, et al.  
Cause called and argued by Arthur Hartinger, counsel for appellants, Mark Schlosberg, counsel for amici ACLU, and Alison Wilkinson, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Thursday, August 7, 2008

The Court reconvened at 1:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Stein, J., Swager, Justice, Fred Abad, Deputy Clerk; and CHP Officer Tammy Smith, Bailiff.

Noting Justice Stein's retirement this month, Justice Marchiano and Justice Swager honored Justice Stein with accolades for his 24 years of remarkable service as a judge for The People of the State California including 20 years with Division One, where he served with distinction and authored over two thousand opinions. Justice Stein reflected on his years of service with the court and thanked everyone for their kind words and attendance. Presiding Justice Marchiano announced the Court would convene and adjourn today in honor of Justice Stein.

Justice Marchiano announced the absence of Justice Margulies for oral argument and asked all counsel for waiver of her presence or continue to this court's September calendar. All counsel waived the presence of Justice Margulies except for appellant in Accatino v. Accatino, A116478, in which Justice Marchiano continued the case to this Court's September calendar.

A118718 Michele Verdin DeCosta,  
v.  
Northstar Risk Management.  
Cause called and argued by Michelle Ferber, counsel for appellant, and Gary Basham, counsel for respondent. Cause ordered submitted.

A114176 Mike Rosen, et al.,  
v.  
Legacy Quest, et al.  
Cause called and argued by Bradley Kass, counsel for appellant, and Mark Hooshman, counsel for respondent. Appellant asked the court to dismissed the appeal and the court granted his motion.

Justice Marchiano left the bench and Justice Stein presided over the last case on calendar.

A117370     Grigoriy Vilenskiy,  
                 v.

Tatyana Feldman.

Cause called and argued by Grigoriy Vilenskiy, appellant in propria persona thru his interpreter Alexander Bantov, and Kenneth Lipson, counsel for respondent.

Cause ordered submitted.

Court adjourned until Friday, August 8, 2008 @ 9:00 a.m.

Friday, August 8, 2008

Division Three

**A121053 – Toshinori Nawa, v. Reuel M Baluyot.**

**A121056 – Toshinori Nawa, v. Luscutoff Lendormy & Associates, et al.**

By The Court: Good cause appearing, the stipulation of the parties to consolidate the above-referenced appeals is granted for purposes of briefing, oral argument, if any, and decision. Counsel for all parties is directed to list both appellate case numbers on all future pleadings. The record on file in A121053 shall be considered the record in A121056. Appellants' consolidated opening brief is due 30 days from the date of this order. McGuiness, P.J.

Division Four

**A121204 – MT. Diablo Unified School District, v. Workers' Compensation Appeals Board and Nicole Rollick.**

The order and opinion of the WCAB is annulled, and the case is remanded for further proceedings consistent with this opinion. The parties shall bear their own costs. Reardon, J., We Concur: Ruvolo, P.J., Rivera, J. (Certified for Publication.)

Division Five

**A117277 – The People, v. David Lynn Wooderson.**

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Friday, August 8, 2008

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Swager, Justice, Racquel Arellano, Deputy Clerk; and CHP Officer Kevin Bartlett, Bailiff.

Justice Marchiano announced the absence of Justice Margulies for oral argument and asked all counsel for waiver of her presence or continue to this court's September calendar. All counsel waived the presence of Justice Margulies.

- A116446 People,  
v.  
Berle J. Grant.  
Cause called and argued by Meredith Watts, counsel for appellant, and Masha Dabiza, counsel for respondent. Appellant asked the court to take judicial notice of internet search results of top selling vehicles in California. The Court denied that request. Cause ordered submitted.
- A118945 People,  
v.  
Richard Leslie Davis.  
Cause called and argued by Barry Kari, counsel for appellant, and Jeremy Seymour, certified law student for respondent. Cause ordered submitted.
- A119733 Stephen Sailnas,  
v.  
Paolo Martin.  
Cause called and argued by Robert Condie, counsel for appellant, and Mark Bonino, counsel for respondent. Cause ordered submitted.
- A120311 Demas Yan,  
v.  
Sing Tao Newspapers San Francisco Ltd., et al.  
Cause called and argue by Cedric Chao, counsel for appellant, and Demas Yan, respondent in propria persona. Cause ordered submitted.

Court Adjourned

Friday, August 8, 2008(Continued)

The judgment is affirmed. Simons, Acting P.J., We Concur: Needham, J., Reardon, J.<sup>3</sup>(Not for Publication.)

**A116840 – The People, v. Joseph Parsons.**

The judgment is affirmed. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

**A119024, A119339 A119947 – Raj Naidu, v. California Public Utilities Commission.**

The judgment and post judgment orders granting equitable relief and attorney fees are affirmed. Jones, P.J., We Concur: Simons, J., Reardon, J.<sup>4</sup> (Not for Publication.)

Monday, August 11, 2008

Division One

**A116277 and A117751 – Ventas Finance I, LLC, v. California Franchise Tax Board.**

Each party shall bear its own costs on appeal. Stein, J., We Concur: Marchiano, P.J., Swager, J. (Certified for Publication.)

**A118784 – Joshua Sakov, v. Ester Adut.**

By The Court: The petition for rehearing is denied. Marchiano, P.J.

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<sup>3</sup> Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>4</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, August 11, 2008(Continued)

**A114258 – Jorge Fernandez et al., v. California Department of Pesticide Regulation, California Strawberry Commission et al.**

By The Court: It is ordered that the opinion filed herein on July 15, 2008, be modified as follows: (See Order.)

There is no change in judgment. The petitions for rehearing of both respondent and interveners are denied. Marchiano, P.J.

**A117128 – David Madden, v. Summit View, INC.**

The judgment is affirmed. Margulies, J., We Concur: Stein, Acting P.J., Swager, J. (Certified for Publication.)

**A117205, A118113 – Sony Electronics INC., v. Pinole Point Properties, INC. Pinole Point Properties, INC., v. Sony Electronics INC., et al.**

The portion of the judgment awarding prejudgment interest is reversed, but the remainder of the trial court's judgment is affirmed. The matter is remanded to the trial court for entry of an amended judgment in conformance with this decision. The parties shall bear their own costs on appeal. Margulies, J., We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

**A118244, A118723 – Zack's, INC., v. City of Sausalito et al.**

For the foregoing reasons, the trial court's grants of summary judgment were error. The judgments are reversed and the matter remanded to the trial court for further proceedings consistent with this opinion. Costs on appeal are awarded to Zack's. Kline, P.J., We Concur: Lambden, J., Richman, J., (Certified for Publication.)

**A115793 – East Santa Rosa Neighbors, v. City of Santa Rosa, Christopherson Homes, INC., et al.**

The order denying the petition for writ of mandate is affirmed. Each party shall bear its own costs on appeal. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Four

**A116627 – The People, v. Sione Fakalata.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A118461 – Michael LA Sala, v. Bally Total Fitness Corporation et al.**



Monday, August 11, 2008(Continued)

The order denying the motion to compel arbitration is reversed. Having concluded Bally has established the existence of an arbitration agreement, the trial court on remand is directed to determine whether the agreement is enforceable. The trial court is further directed to afford the parties a reasonable opportunity to present evidence on the issue of unconscionability as required by Civil Code section 1670.5, subdivision (b). The parties shall bear their own costs on appeal. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A120672 – In re L.M., a Person Coming Under the Juvenile Court Law. The People, v. L.M.**

As L.M. reached age of 21 during the pending of this appeal, the appeal is dismissed as moot. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Tuesday, August 12, 2008

Division One

**A116266 – In re the Marriage of Tania Pares and Michael Smith. Tania Pares, v. Michael Smith. Tania Pares, v. Michael Smith.**

The judgment is affirmed. Marchiano, P.J., We concur: Swager, J., Margulies, J. (Not for Publication.)

**A117370 – In re the Marriage of Grigoriy Vilenskiy and Tatyana Feldman. Grigoriy Vilenskiy, v. Tatyana Feldman.**

The judgment of the trial courts is reversed. Margulies, J., We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A118945 – The People, v. Richard Leslie Davis.**

The judgment are affirmed. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Three

**A119749 – The People, v. Michael Robert Hiscox.**

The judgment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

Tuesday, August 12, 2008(Continued)

**A121061 – The People, v. Blanca E. YI.**

The judgment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A117123 – The People, v. Mack Arthur West, JR.,**

**A119296 - In re Mack Arthur West, JR., on Habeas Corpus.**

The judgment is affirmed. The petition is denied. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

**A120098 – The People, v. Zachary James Eads.**

The judgment is affirmed. The trial court is directed to amend the abstract of judgment and accompanying minute order as set forth in this opinion and to send a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

Division Five

**A118205 – In re the Marriage of Judith George and J. Frank George. Judith George, v. J. Frank George.**

The trial court's order is affirmed. Each party to bear their own costs. Simons, J., We Concur: Jones, P.J., Reardon, J.<sup>5</sup> (Not for Publication.)

**A115362, A115784 – Graham Wiseman et al., v. Ikon Office Solutions, INC.**

By The Court: It is hereby ordered that the opinion filed hereon July 16, 2008, be modified as follows: (See Order.)

**A115362, A115784 – Graham Wiseman et al., v. Ikon Office Solution, INC.**

By The Court: It is hereby ordered that the opinion filed hereon July 16, 2008, be modified as follows: (See Order.)

There is no change in the judgment. Simons, Mark B., P.J. (Not for Publication.)

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<sup>5</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Tuesday, August 12, 2008

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Richman, J., Officer Fredericks and I. Santos, Deputy Clerk.

- A115809      The People,  
                 v.  
                 Darrell Johnson.  
Cause called and argued by Ave Mince-Didier, counsel for appellant, and Donna M. Provenzano, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A119044      In re Jayson C., a Person Coming Under the Juvenile Court Law.  
                 San Francisco Department of Human Services,  
                 v.  
                 Celestine J.,  
                 Jayson C.  
Cause called and argued by Seth Gorman and Donna Furth, counsels for appellants, and Jeremy Sugerman, counsel for respondent. Cause ordered submitted.
- A118084/  
A118452/  
A120925      Estate of Elsie N. Gridley, Deceased.  
                 Patricia Gridley et al.,  
                 v.  
                 Michael A. Gridley et al.  
  
                 Michael A. Gridley et al.,  
                 v.  
                 The Superior Court of San Francisco County;  
                 Patricia Gridley et al., RPI.  
Cause called and argued by Mary E. Mix, counsel for appellant, and James Wagstaffe, counsel for respondent. Cause ordered submitted.
- A117760      Omotayo Fasuyi,  
                 v.  
                 Permatex Inc.  
Cause called and argued by Karl Kime, counsel for appellant, and Robert John Hooy, counsel for respondent. Cause ordered submitted.
- A117795      Estate of Edward U. Regli, Deceased.  
                 David Hitchcock,

v.

Michael Muessig et al.

Cause called and argued by Alan Goldberg, counsel for appellant, and via teleconference, Richard Daly, counsel for respondent. Cause ordered submitted.

**Court recessed until 1:30 p.m.**

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Tuesday, August 12, 2008

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Richman, J., Officer Fredericks and I. Santos, Deputy Clerk.

- A117360      The People,  
                  v.  
                  Myron Craig Kelly.  
Cause called and argued by John Halley, counsel for appellant, and Sara Turner, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A117298      The People,  
                  v.  
                  Edjuan Chardon Scott.  
Cause called and argued by Sara Zimmerman, counsel for appellant, and Ronald E. Niver, counsel for respondent. Cause ordered submitted.
- A115041      Estate of Jessie Annie Bell McGee, Deceased.  
                  Raoul Jerome Robinson,  
                  v.  
                  Shar'ron Wilkins et al.  
Cause called and argued regarding motion for sanctions by Charla R. Duke, counsel for appellant, and Michael R. Dougherty, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Presiding Justice Kline left the bench and Acting Presiding Justice Haerle joined the bench for the remainder of the calendar.

- A118417      The People,  
                  v.  
                  Alfonso Cuevas Gonzalez.  
Cause called and argued by Diana M. Teran, counsel for appellant, and John R. Vance, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A118914      William Gwire,  
                  v.  
                  Roulac Group.

Cause called and argued by William Gwire, counsel for appellant, and J. Philip Martin, counsel for respondent. Cause ordered submitted.

**Court Adjourned.**

Wednesday, August 13, 2008

Division One

**A115399/A115445/A115474/A116164/A116901 – Carla M Clark et al., v. Optical Coating Laboratory INC.**

By The Court: The petition for rehearing is denied. Stein, J. Acting P.J.

Division Two

**A114624 – Carriage House, et al., v. Lawrence Murphy, et al.**

The judgment and the post-judgment order denying the motion for judgment notwithstanding the verdict are affirmed. The post-judgment order granting in part the motion to tax costs is also affirmed. The parties are to bear their own costs on appeal. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A116856 – Peter V. Thompson et al., v. Toll Dublin, LLC, et al.**

By The Court: The opinion in the above-entitled matter filed on July 23, 2008 was not certified for publication in the Official Reports. For good cause, the request for publication by Respondents and interested parties is granted. Pursuant to California Rules of Court, rules 8.1105 and 8.1120, the opinion in the above-entitled matter is ordered certified for publication in the Official Reports. Kline, P.J. (Certified for Publication.)

Division Three

**A119022 – In re Athena H., et al., Person Coming Under the Juvenile Court Law. Lake County Department of Social Services, v. Cynthia H., et al.**

By The Court: The petition for rehearing is denied. McGuiness, P.J.

**A117078 – The People, v. Ryan Anthony O’Neil.**

The matter is remanded to the trial court with directions either to strike condition No. 13 from the conditions of defendant’s probation or to revise the condition in conformity with this opinion. In all other respects the judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Jenkins, J. (Certified for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Wednesday, August 13, 2008

The Court reconvened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Kline, P.J., Haerle, J. Lambden, J., Officer Bartlett and I. Santos, Deputy Clerk.

- A118219      The People,  
                 v.  
                 Danny Reuben Kerbs.  
Cause called and argued by Walter K. Pyle, counsel for appellant, and Gerald Engler, Supervising Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A119734      Davidon Homes,  
                 v.  
                 City of Napa.  
Cause called and argued by William Bates III, counsel for appellant, and Thomas B. Brown, counsel for respondent. Cause ordered submitted.
- A119362      Robinson Rancheria of Pomo Indians,  
                 v.  
                 Kenya Anderson et al.  
Cause called and argued by Jay Shapiro, counsel for appellant, and Joseph J. Wiseman, counsel for respondent. Cause ordered submitted.

**COURT ADJOURNED.**



Thursday, August 14, 2008

Division One

**A117791 – The People, v. Berle J. Grant.**

The judgment of conviction is affirmed. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Thursday, August 14, 2008

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Swager, Justice, Margulies, Justice, Raquel Arellano, Deputy Clerk; and CHP Officer Martin Fredericks, Bailiff.

A115570 All Coast Forest Products, Inc.,  
v.  
City of Cloverdale;  
State of California, et al.  
Cause called and argued by Gary Lepper, counsel for appellant, City of Cloverdale, and Lucille Baca, counsel for respondent, State of California et al. Cause ordered submitted.

At the end of oral argument, Justice Margulies wished Justice Stein luck in his retirement and thanked him for his insight and dedication to the bench.

Court Adjourned

Thursday, August 14, 2008(Continued)

**A108071 – The People, v. Alfredo Gomez Rodriguez.**

The upper term sentence of eight years is vacated and the case is remanded to the trial court for the limited purpose of constructing sentencing proceedings in accordance with the requirements of *Blakely*, *Cunningham*, *French*, *Sandoval* and other applicable law<sup>6</sup> In all other respects, the judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

**A117017 – The People, v. Jared Overton.**

The judgment is affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Three

**A119098 – The People, v. Charles Stevenson.**

By The Court: The petition for rehearing is denied. The matters to which defendant refers in his memorandum of points and authorities in support of the petition are not reflected in the record on appeal and may be considered, if all, only in connection with a properly supported for a writ of habeas corpus. McGuiness, P.J.

**A121209 – Morgan Miller Blair, v. The Superior Court of Contra Costa County, Concord Christian Center, ET AL.**

By The Court: The petition for rehearing is denied. Since this court's 07/18/2008 opinion does not meet the standard for publication as set forth in rule 8.1105© of the California Rules of Court, the request for publication is denied. Pursuant to rule 8.1120(b) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for Publication, the opinion, and a copy of this order. McGuiness, P.J.

Division Four

**A114495 – The People, v. David John Wagner, JR.**

As to the conviction of count two, aggravated mayhem, the judgment is reversed. The trial court is directed to prepare an amended abstract of judgment that is consistent with this opinion and to forward a copy of the amended abstract to the Department of Corrections and

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<sup>6</sup> We are not suggesting what the sentence should be or limiting the various options open to the court on remand.

Thursday, August 14, 2008(Continued)

Rehabilitations. In all other respects, the judgment is affirmed. Rivera, J., We Concur: Reardon, Acting P.J., Sepulveda, J. ( Not for Publication.)

Friday, August 15, 2008

Division One

**A118077 – RN Solution, INC., et al., v. Catholic Healthcare West et al.**

The order denying CHW's and Robertson's motions to compel arbitration is reversed, and the matter is remanded for further proceedings consistent with the views expressed in this opinion. In particular, the trial court should (1) enter an order compelling arbitration of and staying court proceedings on all causes of action of the complaint except the sixth, seventh, eighth, ninth, 13th, 14th, and 15th causes of action; (2) reconsider the arbitrability of the 14th cause of action unless plaintiffs agree to limit its scope to Robertson's alleged physically assaultive conduct; and (3) decide pursuant to the third paragraph of section 1281.2(c) whether a determination of the nonarbitrable issues might make the arbitration unnecessary and, if so, whether the arbitration order should be delayed. We express no opinion as to whether the arbitration order should be delayed under the third paragraph of section 128.2(c) or whether the nonarbitrable claims should be stayed pending upon a motion therefore under section 1281.4. CHW is recover its costs on appeal. Margulies, J., We Concur: Marchiano, P.J., Stein, J. (Certified for Publication.)

Division Five

**A117325 – County of Humboldt, v. Robert C. McKee et al., Linda Hill, as Assessor, etc.**

The judgment on County's complaint and BMR's related cross-complaint and the order awarding costs are reversed. The matter is remanded with instructions to the trial court to (1) vacate its order applying the contract clauses to preclude application of the 1978 Guidelines to the Tooby Contract, (2) issue a new order finding that the 1978 Guidelines do apply to the Tooby Contract and that the division and sale of parcels less than 600 acres violate the guidelines, and (3) impose an appropriate remedy for any such violation. County and Assessor are entitled to their costs on appeal. Simons, Acting P.J., We Concur: Needham, J., Reardon, J.<sup>7</sup> (Certified for Publication.)

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<sup>7</sup> Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, August 18, 2008

Division One

**A117979 – Christine Beck et al., v. Huber Hunt & Nichols.**

By The Court: The petition for rehearing is denied. Marchiano, P.J.

Division Two

**A118472 – The People, v. Cynthia Ann Tomasini.**

The judgment of conviction is affirmed. Richman, J., We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

**A118028 – In re Efren S., a Person Coming Under the Juvenile Court Law. The People, v. Efren S.**

The sustained findings on counts 3 (attempting to dissuade a witness in furtherance of a conspiracy) and 6 (attempting to dissuade a witness by use of force) are reversed. The sustained finding on count 2 (vandalism) is affirmed. The matter is remanded to the juvenile court for further proceedings consistent with the foregoing. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Four

**A120234 – In re John M., a Person Coming Under the Juvenile Court Law. The People, v. John M.**

The jurisdictional and dispositional orders are affirmed. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A120785 – In re Deron D., a Person Coming Under the Juvenile Court Law. The People, v. Deron D.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A120173 – The People, v. Mirrioul James Tolliver.**

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Monday, August 18, 2008(Continued)

Division Five

**A119803 – The People, v. Bradley Joseph Pitt.**

The judgment is affirmed. Reardon, J.<sup>8</sup> We Concur: Simons, Acting P.J., Needham, J.  
(Not for Publication.)

Tuesday, August 19, 2008

Division One

**A118181 – The People, v. Mario Ernesto Bolanos.**

The judgment of the trial court is affirmed. Margulies, J., We Concur: Marchiano, P.J.,  
Swager, J. (Not for Publication.)

**A116063 – The People, v. Robert Berl Bates.**

The judgment is affirmed. Stein, Acting P.J., We Concur: Swager, J., Margulies, J. (Not  
for Publication.)

Division Two

**A117298 – The People, v. Edjuan Chardon Scott.**

The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for  
Publication.)

**A116798 – James Clayworth, et al., v. Pfizer, INC., et al.**

By The Court: The opinion filed herein on July 25, 2008, is modified as follows: (See  
Order.)

The petition for rehearing is denied. Haerle, J. Acting P.J. (Certified for Publication.)

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<sup>8</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, August 19, 2008(Continued)

Division Three

**A120902 – The People, v. Fernando Chavez.**

The judgment is reversed and the matter is remanded with directions to the trial court to conduct a *Marsden* hearing. If the court finds that counsel provided ineffective assistance, substitute counsel shall be appointed, and the court shall entertain any motions that either party shall make thereafter. If the court determines that counsel did not provide ineffective assistance, it shall reinstate the judgment. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A119041 – The People, v. Edith Delgado.**

The judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

**A120823 – In re Tommy W., a Person Coming Under the Juvenile Court Law. The People, v. Tommy W.**

The dispositional order of February 13, 2008, is modified to reflect that appellant's six-month term of commitment at the Orin Allen Youth Rehabilitation Facility is to be credited toward appellant's maximum term of confinement. In all other respects, the dispositional order is affirmed. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

Division Four

**A113017 – The People, v. Rolando S. Meneses.**

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P. J., Reardon, J. (Certified for Partial Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, August 19, 2008

The Court convened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Sepulveda, J.; Annie Reasoner, Deputy Clerk; CHP Officer Marty Fredericks, Bailiff.

A120222      Donald Hobbs  
                 v.  
                 Marin County Employees Retirement  
Cause called. Craig Dykman argued for appellant Hobbs. Patrick Richardson argued for respondent Marin County. Cause submitted.

At this point, Sepulveda, J. left the bench and Rivera, J. joined the bench.

A120280      In re Adam V., a Minor  
                 People  
                 v.  
                 Adam V.  
Cause called. Clifford Stanley argued for appellant Adam V. Christopher Grove argued for respondent. Cause submitted.

At this point, Reardon, J. left the bench and Sepulveda, J. rejoined the bench.

A120565      In re Seth S., a Minor  
                 People  
                 v.  
                 Seth S.  
Cause called. Syda Kosofsky argued for appellant Seth S. Christopher Grove argued for respondent. Cause submitted.

At this point, Ruvolo, P.J. left the bench. Reardon, Acting P.J., rejoined the bench.



A117230 Sandra Caron European Spa

v.

Malgorzata Kerber, et al

Cause called. Allen Capeloto argued for appellant Kerber. Paul Smoot argued for respondent. Cause submitted.

Court adjourned at 2:31 p.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, August 19, 2008

The Court convened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Sepulveda, J.; Annie Reasoner, Deputy Clerk; CHP Officer Marty Fredericks, Bailiff.

A120222      Donald Hobbs  
                 v.  
                 Marin County Employees Retirement  
Cause called. Craig Dykman argued for appellant Hobbs. Patrick Richardson argued for respondent Marin County. Cause submitted.

At this point, Sepulveda, J. left the bench and Rivera, J. joined the bench.

A120280      In re Adam V., a Minor  
                 People  
                 v.  
                 Adam V.  
Cause called. Clifford Stanley argued for appellant Adam V. Christopher Grove argued for respondent. Cause submitted.

At this point, Reardon, J. left the bench and Sepulveda, J. rejoined the bench.

A120565      In re Seth S., a Minor  
                 People  
                 v.  
                 Seth S.  
Cause called. Syda Kosofsky argued for appellant Seth S. Christopher Grove argued for respondent. Cause submitted.

At this point, Ruvolo, P.J. left the bench. Reardon, Acting P.J., rejoined the bench.

A117230      Sandra Caron European Spa  
                 v.  
                 Malgorzata Kerber, et al  
Cause called. Allen Capeloto argued for appellant Kerber. Paul Smoot argued for respondent. Cause submitted.

Court adjourned at 2:31 p.m.

Tuesday, August 19, 2008(Continued)

Division Five

**A119936 – In re Drake C. et al., Persons Coming Under the Juvenile Court Law. Humboldt County Department of Health & Human Services, v. Shirley W. et al.**

The juvenile court's October 26, 2007 order terminating parental rights and ordering adoption as the permanent plan for Drake and W.C. is affirmed. (Not for Publication.)

**A118968 – In re David H., a Person Coming Under the Juvenile Court Law. Napa County Health and Human Services, v. Karen F.**

The July 11, 2007 jurisdictional and dispositional order are affirmed. Reardon, J.<sup>9</sup> We Concur: Jones, P.J., Simons, J. (Certified for Publication.)

**A119727 – In re David H., a Person Coming Under the Juvenile Court Law. Napa County Health and Human Services, v. Karen F.**

The September 24, 2007 order is affirmed in part and reversed in part. The finding that active efforts were provided to prevent the breakup of the Indian family between July 11 and September 24, 2007 is not supported by substantial evidence. The court should take into consideration the inadequacy of services during this period if and when it considers whether Mother has received the maximum services available to her under the dependency scheme. In all other respects, the order is affirmed. Reardon, J.<sup>10</sup> We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Wednesday, August 20, 2008

Division Two

**A115041 – Estate of Jessie Annie Bell McGee, Deceased. Raoul Jerome Robinson, v. Shar'ron Wilkins et al.**

The judgment is affirmed. Not later than 30 days from the issuance of the remittitur, Duke shall pay to Robinson the sum of \$20,000 as sanctions for prosecuting a frivolous appeal

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<sup>9</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>10</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, August 20, 2008(Continued)

(Code Civ. Proc., § 907; Cal. Rules of Court, rule 8.276(a)(1) & (2)), and report the sanctions order to the State Bar of California (Bus. & Prof. Code, § 6068, subd. (o)(3)). The clerk of this court is directed to send a copy of this opinion to the State Bar of California upon the issuance of the remittitur. (Bus. & Prof. Code, § 6086.7, subd. (a)(3).) Duke is to pay the costs of appeal. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A119734 – Davidon Homes, v. City of Napa.**

The judgment is affirmed. Napa is awarded the costs of appeal. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A118219 – The People, v. Danny Rueben Kerbs.**

The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A118121 – The People, v. Kristie T. Meyer.**

Both the judgment and the trial court's order denying appellant's motion to dismiss on double jeopardy grounds are affirmed. Haerle, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A118629 – Mary Wang, v. Archibald Cunningham.**

The judgment is affirmed. Appellant shall pay his own costs on appeal. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

**A119230 – The People, v. Carlos Marquez Zavala.**

The judgment is affirmed. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

**A117761 – Delores Flenoy, v. Alameda County Medical Center.**

By The Court: The petition for rehearing is denied. McGuiness, P.J.

**A116667 – The People, v. Eric Stanley Primas.**

The trial court is directed to amend the abstract of judgment to reflect a total prison term of 16 years and to send a certified copy of the amended abstract to the Department of Corrections

Wednesday, August 20, 2008(Continued)

and Rehabilitation. In all other respects, the judgment is affirmed. McGuiness, P. J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

**A120884 – The People, v. Lavadis Niconda Henderson.**

The judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A119205 – William Semskey et al., v. San Francisco Planning Commission, Upper Market Place, LLC.**

The judgment is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

**A112738 – The People, v. Neal Fiu.**

By The Court: Appellant's petition for rehearing is denied. The opinion filed July 28, 2008, is modified as follows: (See order.)

The above modification does not effect any change in the judgment. Ruvolo, P.J. (Certified for Publication.)

**A121813 – Christine W., v. The Superior Court of San Mateo County, San Mateo County Human Services Agency.**

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (I).) Our decision is final in this court immediately. (Cal. Rules of Court, rule 8.264 (b)(3).) Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Division Five

**A117406 – In re Kenneth T., a Person Coming Under the Juvenile Court Law. The People, v. Kenneth T.**

The judgment is modified as follows: (1) the eight-month term on count 7 is stayed pursuant to Penal Code section 654; and (2) the probation conditions are stricken. As so modified, the judgment is affirmed. Needham, J., We Concur: Simons, Acting P.J., Reardon, J.<sup>11</sup> (Not for Publication.)

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<sup>11</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

Wednesday, August 20, 2008

Court convened at 9:05 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Needham, Jr., J., Reardon, J.,\* Eric F. Cyman, Deputy Clerk, and Joshua Chow, Deputy Clerk.

- A117186 Great American Insurance Company of New York,  
A117187 Roof Structures, Inc.,  
A117334 v.  
Fireman's Fund Insurance Company,  
Underwriters Insurance Company.  
Cause called and argued by Kathryn Ashton and Peter Whalen, counsels for appellants, and by Michael Reynolds and Charles Eisner, counsels for respondents. Cause ordered submitted.
- A116873 Great American Insurance Company of New York,  
v.  
St. Paul Fire and Marine Insurance Company.  
Cause called and argued by Robert Alan Steller, counsel for appellant, and by Kathryn Ashton, counsel for respondent. Cause ordered submitted.
- A117080 The People,  
v.  
Shelton Timonthy McDaniels, Jr.,  
Kendall Lavanon Burton.  
Cause called and argued by David Sundelson, counsel for appellant McDaniels, and Alfons George Wagner, counsel for appellant Burton, and by Aileen Bunney, counsel for respondent. Cause ordered submitted.
- A117309 Rose Ann O'Hagin,  
v.  
O'Hagin's Inc.  
Cause called and argued by Daphne A. Beletsis, counsel for appellant, and by Maryann Rose Marzano, counsel for respondent. Cause ordered submitted.

A118689 The People,  
v.  
Antyone Darnell Collins.  
Cause called and argued by Paul Richard Kleven, counsel for appellant, and by Brent Walter Wilner, counsel for respondent. Cause ordered submitted.

A117246 The People,  
v.  
Jeremiah Birchett.  
Cause called and argued by H. Ernesto Castillo, counsel for appellant, and by David Rose, counsel for respondent. Cause ordered submitted.

A117394 Contempo Marin Homeowners,  
v.  
Manufactured Home Communities et al.  
Cause called and argued by Elliot Lewis Bien, counsel for appellants, and by Hussein Mohammad Saffouri, counsel for respondent. Cause ordered submitted.

Court adjourned at 12:10 p.m.

\*Judge from Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, August 21, 2008

Division One

**A119232 – Helen Respini, v. RMG Electric, INC.**

The judgment of the trial court is reversed, and the matter is remanded to the trial court for further proceedings consistent with this decision. Margulies, J., We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Five

**A120708 – The People, v. Demetrius James Davis.**

The judgment is affirmed. Jones, P.J., We Concur: Simons, J., Reardon, J.<sup>12</sup> (Not for Publication.)

**A117530 – In re the Marriage of Summer Linda M. and James George Fischer.  
Summer Linda M. Giron, v. James George Fischer.**

The trial court's order is reversed and the matter is remanded for further proceedings consistent with this opinion. Husband is awarded his costs on appeal. Simons, J., We Concur: Jones, P.J., Reardon, J.<sup>13</sup> (Not for Publication.)

Friday, August 22, 2008

Division Three

**A115308 – The People, v. Deangeleo Antione Hughes.**

The Judgment is affirmed. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

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<sup>12</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>13</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Friday, August 22, 2008(Continued)

**A117475 – Gas Pipeline Explosion Cases.**

The judgment is affirmed. The parties shall bear their respective costs on appeal. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

**A119160 – The People, v. Raymond Eugene Jones.**

The case is remanded for calculation of custody credits up to including July 25, 2007, the date of resentencing, and the court is directed to forward a corrected abstract of judgment to the California Department of Corrections. The judgment is otherwise affirmed. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

**A119213 – Eric G. Williams, v. Department of Motor Vehicles.**

The judgment is affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

Division Four

**A119530 – The People, v. James Blue, JR.**

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P. J., Reardon, J. (Not for Publication.)

Monday, August 25, 2008

Division Three

**A121100 – The People, v. Stephen Edward Jones.**

The judgment is affirmed. Siggins, J., We Concur: Pollak, Acting P. J., Jenkins, J. (Not for Publication.)

**A120421 – The People, v. Marcus Wade Smith.**

The judgment is affirmed. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

**A118762 – Fitzgerald Abbott & Beardsley LLP, v. Michelle Miller.**

By The Court: It is ordered that the opinion filed herein on July 31, 2008, be modified as follows: (See Order.) Pollak, J. (Not for Publication.)

Monday, August 25, 2008(Continued)

**A120516 – In re Ricardo G., a Person Coming Under the Juvenile Court Law. County of San Mateo Human Services Agency, v. Brenda H.**

The order terminating mother's parental rights is affirmed. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

**A118433 – Geronima Belen, v. Matthew Taylor. Matthew Taylor, v. Geronima Belen.**

That portion of the judgment awarding Belen \$12,600 in damages is stricken, and the judgment is modified to award Belen a total of \$853.50 in trial court costs. As so modified, the judgment is affirmed. The parties shall bear their own costs on appeal. Reardon, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

**A117744 – Arntz Builders, v. City of Berkeley.**

The judgment is reversed. Rivera, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A116078 – Arntz Builders, v. City of Berkeley.**

The judgment is reversed, and the matter is remanded for further proceedings consistent with this opinion. Rivers, J., We Concur: Ruvolo, P.J., Reardon, J. (Certified for Partial Publication.)

Division Five

**A119878 - In re R.R. and N.R., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. H.R.**

The appeal is dismissed as moot. Needham, J., We Concur: Simons, Acting P.J., Reardon, J.<sup>14</sup> (Not for Publication.)

**A120203 – Lucky United Properties Investment, INC., et al., v. Albert Lee.**

The judgment is affirmed. Lee is entitled to his costs on appeal. Simons, J., We Concur: Jones, P.J., Reardon, J.<sup>15</sup> (Not for Publication.)

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<sup>14</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, August 25, 2008(Continued)

**A117185 – The People, v. George Lewis Kendall.**

The January 22, 2007 order denying appellant's petition for section 1203.4 relief is affirmed. Jones, P.J., We Concur: Simons, J., Reardon, J.<sup>16</sup> (Not for Publication.)

Tuesday, August 26, 2008

Division One

**A120475, A121005 – In re A.J., a Person Coming Under the Juvenile Court Law. San Francisco City and County Department of Human Services, v. Willie J.**

The orders if the juvenile court are affirmed. Margulies, J., We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A118911 – Witt Home Ranch Inc., v. Sonoma County.**

By The Court: The petition for rehearing is denied. Marchiano, P.J.

Division Two

**A120017 – The People, v. Angel Garcia Lara.**

Accordingly, the judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A118914 – William M. Gwire, v. The Roulac Group.**

The judgment is affirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

**A116383 – The People, v. Rodney Jefferson.**

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<sup>15</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>16</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, August 26, 2008(Continued)

The order revoking probation is affirmed. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

**A115684 – The People, v. Tina Gutierrez et al.**

The case is remanded for resentencing of Jorge and Tina. The judgment is affirmed in all other respects. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

Division Four

**A116389 – Michael Christoph Kreutzer, v. City and County of San Francisco.**

The judgment is reversed, and the case is remanded with directions to the trial court to enter a new judgment in favor of the City, and to vacate its post-judgment order awarding attorney fees to Dr. Kreutzer. (See *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1120-1121.) The City is awarded its costs on appeal. Ruvalo, P.J., We Concur: Reardon, J., Sepulveda, J. (Certified for Publication.)

Division Five

**A119156 – The People, v. Rigoberto Sandoval Barragan.**

The judgment is affirmed. Jones, P.J., We Concur: Simons, J., Reardon, J.<sup>17</sup> (Not for Publication.)

Wednesday, August 27, 2008

Division One

**A119557 – In re T.H., a Person Coming Under the Juvenile Court Law. Contra Costa County, Children and Family Services Bureau, v. Teresa M.**

The dispositional orders denying appellant reunification services and denying visitation with T.H. are affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

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<sup>17</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, August 27, 2008(Continued)

**A119731, A119732 – The People, v. Kelly McKiernan.**

The judgments are affirmed. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A119921 – The People, v. Terrance S. Thompson.**

The judgment is affirmed. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

**A120694 – The People, v. Cheri Marie Castagne.**

The judgment of conviction is affirmed, the sentence is reversed, and the matter is remanded to the trial court for resentencing proceedings consistent with this opinion. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A117795 – Estate of Edward U. Regli, Deceased. David Hitchcock, v. Michael Muessig.**

The February 15, 2007, order is affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A114208 – Maria O. Segovia et al., v. Peter Bach et al.**

The judgment and the order denying the motion for judgment NOV are affirmed. The purported appeals from all other orders are dismissed. Bach shall recover its costs of appeal. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A121953 – The People, v. Eric Garfield Williams.**

By The Court: The above-referenced misdemeanor appeal was transmitted to this court in error. Because the appeal is already pending in the Appellate Division of Solano County Superior Court, this court need not transfer the appeal to that court. The appeal in this court is hereby dismissed. McGuiness, P.J.

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, August 27, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., and Jenkins, J.; and F. Castuera, Deputy Clerk.

McGuiness, P.J. announced that Pollak, J. was away from court and has read the briefs, will have recordings of oral argument, and will conference the case with the panel when he returns. Oral argument proceeded without the presence of Pollak, J.

A120485 Allen Bates et al.,  
v.  
Granada Healthcare and Rehabilitation Center et al.

Cause called and argued by Scott Kiepen, counsel for appellant, and Timothy Needham, counsel for respondent Allen Bates. Cause ordered submitted.

A118303 Peninsula Guardians Inc.,,  
A118679 v.  
Peninsula Health Care District et al.,  
Cause called and argued by Mitchell Green and Joseph Quinn, counsels for appellant, and Harriet Steiner, counsel for respondent, Mills-Peninsula Health Services, and Douglas Strauss, counsel for respondent+, Peninsula Health Care District et al.  
Cause ordered submitted

COURT ADJOURNED

Wednesday, August 27, 2008(Continued)

Division Four

**A120565 – In re Seth S., a Person Coming Under the Juvenile Court Law. The People, v. Seth S.**

The orders of the juvenile court are affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

**A119162 – The People, v. Charles J. Morris.**

The judgment is reversed as to count two (receiving stolen property) and the sentence imposed as to that count is vacated. In all other regards, the judgment is affirmed. The trial court shall prepare a modified abstract of judgment and forward it to the Department of Corrections. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Certified for Partial Publication.)

**A115603 – The People, v. Nathan Lee Davidson.**

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

**A117723 – The People, v. Eric Alan Skinner.**

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A117246 – The People, v. Jeremiah Birdchett.**

The judgment is affirmed. We remand solely to direct the trial court to prepare an amended abstract of judgment correctly referring to the third offense as Health and Safety Code section 11351.5, and to forward a certified copy of the amended abstract to the California Department of Corrections and Rehabilitation. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Thursday, August 28, 2008

Division One

**A119280 – In re Jasmine N., a Person Coming Under the Juvenile Court Law.  
Contra Costa County Department of Children and Family Services, v. Tiffany N.**

Accordingly, the judgment is affirmed. Swager, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A119733 – Stephen Salinas, v. Paolo Martin.**

We conclude that as a matter of law respondent owed a duty of care to appellant.<sup>18</sup> Accordingly, the judgment in favor of respondent is reversed and the case is remanded to the trial court for proceedings not inconsistent with the views expressed herein. Costs on appeal are awarded to appellant. Swager, J., We Concur: Marchiano, P.J., Margulies, J. (Certified for Publication.)

Division Three

**A118225 – The People, v. George Yates.**

The matter is remanded as set forth above to correct the error of imposing a concurrent sentence on appellant's prior prison term enhancement. Thereafter, the trial court is directed to amend the abstract of judgment to reflect (1) a correct sentence on the prior prison term enhancement and (2) an indeterminate life term on count one. The trial court shall then send a certified copy of the abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed. McGuiness, P.J. We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

**A117230 – Sandra Caron European SPA, INC., v. Malgorzata Kerber et al.**

The judgment denying the Kerber's motion to strike is affirmed. Reardon, Acting P.J., We Concur: Sepulveda., Rivera, J. (Not for Publication.)

Division Five

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<sup>18</sup> We do not express any views on the separate and contrasted fact-specific issues of breach of duty, causation and damages, which are posed to the trier of fact. (*McGarry v. Sax* (2008) 158 Cal.App.4th 983, 994 [70 Cal.Rptr.3d 519]; *Romito v. Red Plastic Co.* (1995) 38 Cal.App.4th 59, 66 [44Cal.Rptr.2d 834].)



Thursday, August 28, 2008(Continued)

**A115903 – The People, Luke Wayne Brockman.**

The judgment is affirmed. Jones, P.J., We Concur: Needham, J., Reardon, J.<sup>19</sup> (Not for Publication.)

Friday, August 29, 2008

Division One

**A115570 – City of Cloverdale, v. Department of Transportation.**

The judgment for the Department on the City's cross-complaint is reversed on the indemnity causes of action, and is otherwise affirmed. The parties shall bear their own costs on appeal. Marchiano, P.J., We Concur: Stein, J., Margulies, J. (Certified for Partial Publication.)

**A120372 – Linda Pedroni et al., v. City of American Canyon et al.**

The dismissal orders are affirmed, with costs to the Cities. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

**A118081 – The People, v. Nicolay Y. MGebrov.**

The trial court's order is vacated and this matter remanded to the trial court with instructions to enter a new order that is consistent with this opinion. The trial court's ruling is affirmed in all other respects. Lambden, J., We Concur: Kline, P.J., Richman, J. (Certified for Publication.)

Division Three

**A121154 – The People, v. Carl Robert Grafe, JR.**

The judgment is affirmed. Jenkins, J., We Concur: McGuinness, P.J., Siggins, J. (Not for Publication.)

Division Four

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<sup>19</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, August 29, 2008

**A119218 – Jose S. Camins, v. Mae Solis Jesena.**

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

Division Five

**A117080 – The People, v. Shelton Timothy McDaniels et al.**

The judgments are affirmed. Jones, P.J., We Concur: Needham, J., Reardon, J.<sup>20</sup> (Not for Publication.)

**A118689 – The People, v. Antyone Darnell Collins.**

The judgment is affirmed. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

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<sup>20</sup> Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.